

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John Breen on 9/24/08.

The application has been amended as follows:

Please cancel claims 21, 29, and 32-37; and amend the following claim:

Claim 27. An analyte evaluation instrument, comprising:

an optical measuring device, and

an electronic assembly electrically coupled to the optical measuring device, the electronic assembly being operable to:

analyze output from the optical measuring device so as to assess the amount of sample placed on a test element, wherein the assessment is based on an interaction between a control substance disposed on the test element and a sample matrix of the sample, [and]

analyze output from the optical measuring device to determine the analyte content of the sample, wherein the determination is based on an interaction between a reagent disposed on the test element and the analyte in the sample[.];
and

the electronic assembly is further operable to correct the analyte content of the sample if the amount of the sample placed on the test element is determined to be less than a predetermined calibration value.

Allowable Subject Matter

2. Claims 19, 22-28, 30, 31, and 38 are allowed.
3. The following is an examiner's statement of reasons for allowance: the prior art of record (Fleming) fails to teach or fairly suggest a system or a method that has an electronic assembly that is operable to correct the analyte content of the sample if the amount of the sample placed on the test element is determined to be less than predetermined calibration value in combination with the remaining features and elements of the claimed invention.

Furthermore, the prior art of record (Fleming) fails to teach or fairly suggest a system that comprises an electronic circuit operatively coupled to an optical measuring device, wherein the electronic circuit is configured to analyze a first photometrically detectable signal from the optical measuring device to determine the analyte content of the sample based on the concentration of the analyte in the sample, and analyze a second photometrically detectable signal from the optical measuring device to determine whether an underdosage of the sample has occurred on the test element based on the interaction between the control substance and the sample matrix in combination with the remaining features and elements of the claimed invention.

In addition, the prior art of record (Fleming) fails to teach or fairly suggest an analyte evaluation instrument having an electronic assembly electrically

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coupled to an optical measuring device, wherein the electronic assembly is operable to operate the optical measuring device to determine the analyte content of the liquid sample based on the concentration of the analyte in the liquid sample.

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Wild et al.; Ramel et al.; and Rosenthal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LORE RAMILLANO whose telephone number is (571)272-7420. The examiner can normally be reached on Mon. to Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797

Lore Ramillano
Examiner
Art Unit 1797